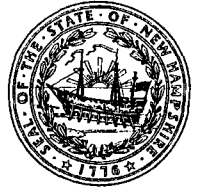




State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3644 FAX (603) 271-2181



January 6, 2003

Motiva Enterprises  
Attn: Joan Trout  
798 Haddonfield/Berlin Road  
Cherry Hill, New Jersey 08034

**NOTICE OF NON-COMPLIANCE and  
PERMIT REVOCATION – NCPR # 03-001**

RE: LONDONDERRY, BUD'S SUPER SHELL, EXISTING UNDERGROUND STORAGE  
TANK FACILITY (UST #M-0111429) (DES #199008017)

Dear Ms. Trout:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at Route 93 and Route 102, Londonderry, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On July 11, 2002 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on April 6, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

1. Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory records were not being performed correctly. Inventory monitoring shall be corrected and be provided to DES.

2. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment device was not installed. The spill containment device shall be installed as required and documentation substantiating the installation shall be provided to the DES.

3. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection device was not installed at the required 90% alert or 95% shut off level. The overfill protection

device shall be installed at the required 90% alert or 95% shut off level. Verification shall be provided to the DES that the overfill protection device has been installed at the required 90% alert or 95% shut off level.

4. Env-Wm 1401.30 Release Detection for Piping

Env-Wm 1401.30 requires line leak detectors to be installed on all pressurized piping systems and tested annually to confirm that they are operating according to manufacturers recommendations. DES has determined that the line leak detector was not installed. The line leak detector installation documentation shall be provided to the DES.

5. Env-Wm 1401.27 Leak Monitoring for New Underground Piping Systems and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.27 and/or Env-Wm 1401.31 require leak monitoring for piping to be installed and continuously operate. DES has determined that the leak monitor for piping was not continuously operating. Documentation of the maintenance or replacement for the leak monitor for piping shall be provided to the DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not maintained compliance, consequently, should your permit be revoked the Fund will not be available to you as a financial responsibility mechanism for subsequent releases. At such time as the deficiencies listed in this Notice have been resolved and your facility has been deemed in compliance with RSA 146-C and Env-Wm 1401, you may again use the Fund as your financial assurance mechanism for future releases.

In accordance with RSA 146-4:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance, as requested above, is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0111429) shall be revoked effective **April 6, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this

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facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, you may contact undersigned, at the Waste Management Division at (603) 271-1165.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn A. Woodard", is written over a large, bold, black stamp that says "COPY".

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 1422

cc: George Dana Bisbee, Acting Commissioner  
Mark Harbaugh, DES Legal Unit  
Fred McGarry, P.E., Chief Engineer, WMD  
George Lombardo, P.E., WMD  
Tom Beaulieu, WMD  
Health Officer, Town of Londonderry